

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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19-CV-0007 (CBA)

3 ROBERT BARTLETT, ET AL.,

4 Plaintiffs,

United States Courthouse
Brooklyn, New York

5 -against-

August 31, 2020
2:00 p.m.

6 SOCIETE GENERALE DE BANQUE AU LIBAN
7 SAL, ET AL.,

8 Defendants.

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10 TRANSCRIPT OF CIVIL CAUSE FOR ORAL ARGUMENT
BEFORE THE HONORABLE CAROL B. AMON
UNITED STATES DISTRICT JUDGE

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1 THE COURT: Good afternoon. This is Judge Amon on
2 the line. I'll ask my law clerk, Mr. Marks, to please call
3 the case.

4 THE LAW CLERK: Hello?

5 THE COURT: Hello?

6 THE LAW CLERK: Hello, can you hear me?

7 THE COURT: Yes.

8 THE LAW CLERK: This is --

9 THE COURT: Go ahead.

10 THE LAW CLERK: This is case number 19-CV-007,
11 Bartlett, et al. v. Societe Generale de Banque au Liban SAL on
12 for oral argument on defendants' motions to dismiss.

13 Our court reporter is Georgette Betts and she is on
14 the line and counsel have entered their appearances and, Your
15 Honor, if you'd like, we can have counsel restate their
16 appearance on the record.

17 THE COURT: They previously entered their appearance
18 with the court reporter; is that correct?

19 THE LAW CLERK: Yes.

20 THE COURT: Then we don't need to do that again.

21 As I understand it, on the issues of liability, with
22 the exception of JTB's liability and successor liability, that
23 Mr. Hanchet will address that for the defense counsel why the
24 complaint should be dismissed; is that correct?

25 MR. HANCHET: This is Mark Hanchet, yes, that's

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1 correct, Your Honor.

2 THE COURT: All right, Mr. Hanchet, you want -- and
3 Mr. Osen, you're on for the plaintiffs and you'll respond; is
4 that correct?

5 MR. OSEN: That is correct, Your Honor.

6 THE COURT: Mr. Hanchet, you want to be heard?

7 MR. HANCHET: Yes, Your Honor, thank you very much.

8 Once again this is Mark Hanchet of Mayer Brown. I'm
9 presenting argument on behalf of the moving defendants with
10 respect, as Your Honor said, to the issues raised in the joint
11 motion to dismiss. Counsel for each defendant bank of course
12 is present and can address any question the Court may have
13 specific to that individual bank as set forth, Your Honor, in
14 the chart attached to our August 28th letter. And as Your
15 Honor pointed out, counsel for SGBL will separately address
16 issues relating to Count Four and we are not arguing on behalf
17 of Jammal Trust.

18 THE COURT: And there is counsel for Jammal Trust, I
19 believe that is Mr. DeLaquil, is that how you pronounce your
20 name?

21 MR. DeLAQUIL: This is Mark DeLaquil.

22 THE COURT: DeLaquil, okay.

23 MR. DeLAQUIL: Different people in my family
24 pronounce it differently. I pronounce it DeLaquil.

25 THE COURT: I just pronounced it as your aunt did I

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1 guess, so we'll leave it at that. Okay.

2 I'm sorry, Mr. Hanchet, you want to continue?

3 MR. HANCHET: Yes, Your Honor. Your Honor no doubt
4 is familiar with the pleadings and familiar with the briefings
5 so I'll keep my remarks relatively short. I can summarize the
6 facts in 30 seconds.

7 Basically, Your Honor, the moving defendants are 11
8 banks that are all based in Lebanon and together these banks
9 constitute the vast majority, really the entire banking sector
10 of Lebanon, and these banks are alleged to have provided
11 arms-length, routine banking services to commercial customers
12 in Lebanon.

13 There are no allegations --

14 THE COURT: Well --

15 MR. HANCHET: Yes, Your Honor.

16 THE COURT: Some of those commercial customers -- I
17 mean it's also alleged that they provided banking services to
18 at least a couple of entities that were known to be directly
19 tied into Hezbollah, correct?

20 MR. HANCHET: Well, Your Honor, that's -- the
21 plaintiffs have alleged such connections, but I would point
22 out that other courts that have considered very similar
23 allegations have deemed those to not be credible or
24 sufficient, but be that as it may, Your Honor, it's important
25 to understand of course that the customers that the banks were

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1 servicing were not Hezbollah. They were commercial customers.
2 They were car washes, they were amusement parks, et cetera.

3 THE COURT: Well, not all of them though. Weren't
4 some of them -- weren't there individual accounts held by
5 people who were alleged to be operatives of Hezbollah?

6 MR. HANCHET: Your Honor, there are no credible
7 allegations -- yes, there are allegations of that yes, Your
8 Honor, I agree with that statement.

9 THE COURT: Well, then how -- I mean you say there
10 are no credible allegations. I mean there is an allegation
11 that a person was, you know, an operative with Hezbollah, how
12 do we determine that that's not credible --

13 MR. HANCHET: Well, Your Honor, there's no --

14 THE COURT: -- I mean, is that your point?

15 MR. HANCHET: My point is there are no specific
16 allegations that get into the details of these individuals
17 allegedly with ties to Hezbollah. But, Your Honor, even if we
18 accept that some of these customers have some sort of tie with
19 Hezbollah, and the specifics are not alleged in the complaint,
20 Your Honor, that says nothing to do -- that has nothing to do
21 with the actual injuries that were suffered in this case.

22 The plaintiffs, as Your Honor well knows, are U.S.
23 service personnel that served in Iraq between 2004 and 2011
24 and they suffered injuries from violent attacks carried out by
25 Shia militia in Iraq.

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1 Now the plaintiffs basically say that the banks
2 should be held responsible for these injuries under the ATA
3 and JASTA, but what is it that the Lebanese banks have to do
4 with these attacks that occurred in another country?
5 Plaintiffs basically say that Hezbollah, and Your Honor was
6 touching on this, helped train and support the militias that
7 carried out the attacks. Plaintiffs say, also, that the
8 defendants conducted banking services on behalf of certain
9 entities with vague links to Hezbollah. But the fact is, even
10 though the banks provided banking services to commercial
11 entities in Lebanon and even though the attacks were carried
12 out by Shia militias in Iraq, Hezbollah is being used to link
13 the attackers with the banks. That's the nature of the
14 claims, Your Honor. And similar ATA and JASTA actions that
15 have been brought against commercial entities in this district
16 and beyond have been rejected. Those lawsuits, some of them
17 involve the same plaintiffs, some of them involve the same
18 attacks and some even the same defendants as in this case have
19 been dismissed because the plaintiffs utterly failed to link
20 the commercial defendants to the violence that injured the
21 plaintiffs.

22 THE COURT: So is it a causation problem? Let's
23 separate it into the primary liability and the aiding and
24 abetting liability. What is the defect, the principal defect
25 that you see in the primary liability?

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1 MR. HANCHET: There are two problems, Your Honor, in
2 the primary liability context. One is, as you pointed to
3 proximate causation. As Your Honor well knows, *Rothstein*, the
4 Second Circuit authority on this in this particular context
5 says, that the conduct must lead directly to plaintiffs'
6 injuries, the conduct must be a substantial factor in causing
7 those injuries, and those injuries must be foreseeable as a
8 consequence of the conduct --

9 THE COURT: And you're saying --

10 MR. HANCHET: -- your Honor, none of that applies
11 here. I'm sorry.

12 THE COURT: Well, they're saying that they were
13 helping provide financing to Hezbollah and that Hezbollah in
14 turn was responsible for these terrorist attacks because they
15 trained the individuals. Why isn't that a sufficient link?

16 MR. HANCHET: Well, Your Honor, that is exactly the
17 link that they're trying to -- that they are trying to draw
18 here. They're saying basically that the plaintiffs provided
19 banking services to customers in Lebanon, those customers --
20 that banking activity helped Hezbollah grow into a global
21 empire which allowed Hezbollah to develop training camps,
22 which allowed Hezbollah to provide some type of support to
23 Shia militias in Iraq, and it's those militias that
24 perpetrated the violence that injured the plaintiffs. Your
25 Honor, that's a pretty lengthy chain and when other plaintiffs

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1 have tried to assert just that type of theory, and I point the
2 Court, respectfully, towards *Al Rajhi Bank*, *Zapata*, *Kaplan*
3 *Freeman*, *O'Sullivan*, these are all cases we cited in our
4 papers, those causal theories have failed. Allegations
5 regarding Hezbollah's so-called alter egos being various
6 entities that are sprinkled throughout the complaint are
7 insufficient under *Iqbal*. It's just alter ego conjecture.
8 They offer no facts permitting the plausible inference that
9 these entities are fronts for Hezbollah.

10 So, Your Honor, that's the proximate causation
11 argument. The other defect --

12 THE COURT: Well, assuming that there were
13 allegations that were sufficient to link them to Hezbollah, is
14 the complaint still deficient in your view?

15 MR. HANCHET: It is, Your Honor, because in order to
16 properly plead a primary liability claim under the ATA, they
17 have to meet the ATA's definitional requirements of
18 international terrorism. And, here, they would have to allege
19 that the moving defendant itself each committed an act of
20 international terrorism and there is no court that has said
21 that providing banking services to commercial entities
22 qualifies as an act that is dangerous to human life.

23 Secondly, Your Honor --

24 THE COURT: But there's the Seventh Circuit case
25 that does talk about the fact that if you donate directly to a

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1 terrorist organization that is sufficient.

2 MR. HANCHET: Well, Your Honor, I think you're
3 referring to the *Boim* case.

4 THE COURT: Yes, *Boim*.

5 MR. HANCHET: Yes, and in all candor, *Boim* has been
6 overtaken by a series of other cases that have cast doubt on
7 that particular proposition, but most recently *Linde* speaks
8 directly to this issue, Your Honor.

9 The second issue that I really want to focus Your
10 Honor's attention on in terms of --

11 THE COURT: Well, you act as if -- or you make the
12 point that *Boim* is, I guess you're saying is no longer a case
13 that the Court should rely on, but can you distinguish this
14 circumstance from *Boim*, distinguish what happened here from
15 that case?

16 MR. HANCHET: Well, Your Honor, in -- I'm trying to
17 remember the specific facts of *Boim*, Your Honor, I'm afraid I
18 can't do that sitting here right now.

19 THE COURT: Okay. Continue.

20 MR. HANCHET: Your Honor, the second defect with
21 primary liability is the plaintiffs' failure to plead
22 objective terroristic intent. The plaintiffs have to
23 establish and plead, plausibly, that the moving defendants
24 harbored terroristic intent and, frankly, a reasonable
25 observer here would hardly embrace the notion that the banks

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1 in Lebanon harbored a terroristic intent. The obvious
2 alternative explanation is that they were simply providing
3 banking services for commercial purposes.

4 This is the result that was reached in a later
5 Seventh Circuit decision, Your Honor, *Kemper V. Deutsche Bank*
6 and *Zapata*. And in *Kemper* the court said, to the objective
7 observer, Deutsche Bank's interactions with Iranian entities
8 were motivated by economics, not by a desire to intimidate or
9 coerce. In *Zapata*, Judge Cote found that to an objective
10 observer, HSBC's conduct appeared to be motivated by economics
11 not a desire to intimidate or coerce.

12 Your Honor, I would say the same is true here. This
13 is an instance where the Lebanese banking sector is being
14 essentially accused of having terroristic intent when, in
15 fact, it's far more plausible, objectively, to conclude that
16 the banking sector is interested in servicing the financial
17 needs of the country and its population and is driven by
18 economic considerations.

19 THE COURT: All right. Why isn't there -- do you
20 want to address the aiding and abetting liability?

21 MR. HANCHET: I do, Your Honor.

22 THE COURT: Okay. Is there anything further that
23 you wish to point out with respect to the primary liability
24 issues?

25 MR. HANCHET: Well, only that primary liability

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1 claims have been rejected so soundly in recent jurisprudence
2 in all of the cases that I've been discussing so far.

3 THE COURT: Which case do you -- when you talk about
4 recent jurisprudence there are a number of cases, which case
5 do you think is most closely analogous to this case?

6 MR. HANCHET: Your Honor, I would -- I don't know if
7 it's the most analogous, but I would say one of the most
8 instructive recent cases is *the Kaplan* case by Judge Daniels
9 in the Southern District of New York. That case is on all
10 fours. *Kaplan* covers the primary liability issues you've been
11 talking about, it also rejects, on the pleadings, aiding and
12 abetting and conspiracy theories under JASTA. So that's a
13 good decision, Your Honor, because it actually discusses
14 decisions from around the country, different circuits, it's
15 recent and it's thorough. And of course, *Kaplan* has been
16 cited in subsequent cases in the Eastern District and the
17 Southern District, so...

18 THE COURT: Do you know if that case is on appeal,
19 do you know one way or the other?

20 MR. HANCHET: Your Honor, give me two seconds on
21 that. Perhaps one of the parties on the phone, Mr. Siegfried
22 might be able to address that question.

23 MR. SIEGFRIED: Your Honor, this is Jonathan
24 Siegfried. The case is on appeal.

25 THE COURT: Okay. Thank you.

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1 MR. SIEGFRIED: Except, I would say, Your Honor, to
2 be complete in that description, the plaintiffs who are
3 represented by the same counsel here have not -- did not
4 appeal or didn't brief and argue that the dismissal of the
5 primary liability claim by Judge Daniels was in error, nor
6 have they argued that his dismissal of the conspiracy claim
7 was in error.

8 THE COURT: Was it just the aiding and abetting
9 claim?

10 MR. SIEGFRIED: That's correct, Your Honor.

11 THE COURT: All right, Mr. Hanchet, did you want to
12 take up the -- not the primary liability issues but the aiding
13 and abetting and the conspiratorial claims?

14 MR. HANCHET: Yes, Your Honor. With respect to
15 aiding and abetting, I would say that the leading case is the
16 Second Circuit decision in *Siegel*. *Siegel* basically sets
17 forth channeling essentially *Halberstam*, sets forth the two
18 elements that need to be alleged credibly. There has to be
19 general awareness on the part of the defendant and the
20 defendant has to --

21 THE COURT: General awareness of what?

22 MR. HANCHET: Well, JASTA requires that the
23 secondary actor be aware that by assisting the principal, it
24 is itself assuming a role in terrorist activities. So it
25 needs to know that what it is doing is actually assisting in

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1 the terrorist activities, in this case the attacks in Iraq.

2 And, Your Honor, the pleadings don't give us -- they don't
3 give rise to an inference sufficient to satisfy that element.

4 THE COURT: Well, isn't there sufficient allegations
5 to show that they should have been aware that they were
6 dealing with Hezbollah entities and also that Hezbollah was an
7 organization that funded terrorist activities, isn't there
8 sufficient allegations to show a general awareness of those
9 two facts?

10 MR. HANCHET: Well, even if we accept the
11 proposition, Your Honor, that there was an awareness that the
12 banks were providing somehow services to Hezbollah, a FTO,
13 that would still be insufficient. That -- *Linde*, another
14 Second Circuit decision, Your Honor, speaks directly to this
15 issue. The knowledge requirement is -- has to be that there
16 is an understanding that the defendant is itself assuming a
17 role in the terrorist activities. So courts, once again, Your
18 Honor, have recently and consistently rejected these kinds of
19 claims. And I mentioned *Siegel* but *Kaplan* speaks to this as
20 does *Honickman* and *Averbach* also cited throughout our papers.

21 The second element, Your Honor, is substantial
22 assistance. And once again, there has to be allegations that
23 the defendants substantially assisted the principals in this
24 case in conducting the attacks. Well, *Halberstam*, which is
25 incorporated into JASTA, provides six elements and they are as

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1 follows, Your Honor, and we briefed this:

2 The nature of the act encouraged. How can it be
3 said that the banks in this case encouraged anybody to conduct
4 attacks, there is no such allegation in this complaint.

5 Second, the amount of assistance given by the
6 defendants. Well, we would say that no assistance is being
7 given to Hezbollah let alone to the attackers that are
8 conducting the attacks.

9 The third element is the defendants' presence or
10 absence at the time of the tort. And plaintiffs nowhere
11 suggest that the banks were present in Iraq when these attacks
12 were occurring.

13 Next, it's defendants' relation to the principal.
14 Well, I've spent the last few minutes explaining how these
15 banks have nothing to do with the principals, that there are
16 all kinds of intermediaries between them, including Hezbollah.

17 Then there is defendants' state of mind, this sort
18 of harkens back to what we were just talking about the general
19 awareness and, finally, the period of defendants' assistance.
20 Well, we don't know that because the plaintiffs don't lay out
21 in any specificity whatsoever how long the banking services
22 were allegedly being supplied to the commercial entities in
23 Lebanon.

24 So each of these factors favors dismissal, Your
25 Honor. And once again, these types of allegations have

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1 failed. They failed in *Siegel*, they failed in *Kaplan*, they
2 failed in *Honickman*, they failed in *Averbach*, and they failed
3 here, Your Honor.

4 THE COURT: All right. Thank you. Let me hear now
5 from Mr. Osen. Have I pronounced your name correctly?

6 MR. OSEN: Yes, Your Honor.

7 THE COURT: First of all, what is your strongest
8 theory here, is it the primary liability or the secondary
9 liability, aiding and abetting in your view, what's the
10 strongest part in this complaint.

11 MR. OSEN: In this particular case, Your Honor, I
12 think they are equal. In many cases one theory or another is
13 stronger, but here I think the allegations are so overwhelming
14 that they meet any standard under either 2333(a) or under
15 JASTA.

16 THE COURT: Counsel has pointed out -- counsel for
17 the defendants has pointed out that there are a whole series
18 of cases that have found that the complaints were insufficient
19 in very similar circumstances, *Kaplan*, *Honickman* to name but
20 two. In your view, are these cases wrongly decided or is this
21 case distinguishable from those?

22 MR. OSEN: Your Honor, the answer to that, Your
23 Honor, I think is both. Let me say that both *Kaplan* and
24 *Honickman* are up on appeal. In the case of *Kaplan* it has a
25 particularly unusual procedural history because it is the

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1 residual case, if you will, of the *Licci* line of cases best
2 known for rulings on personal jurisdiction and, in fact, there
3 was a companion case that was part of the original complaint
4 dealing with plaintiffs who brought claims under the Alien
5 Tort Statute, and so there's sort of a parallel Second Circuit
6 decision on the issue of the aiding and abetting claim under
7 international law for that same conduct but by the alien
8 non-U.S. national plaintiffs. I think the decision by the
9 Second Circuit is instructive of the Court's view of the
10 allegations in that complaint.

11 Who -- to answer your question again, I think both
12 *Honickman* and *Kaplan* are distinguishable but I also think
13 they're wrongly decided and I'm happy to elaborate as to
14 either part.

15 THE COURT: Well, why don't you do that as to both
16 parts.

17 MR. OSEN: Okay. With respect to *Kaplan*, the
18 distinguishing fact, even assuming one accepted *arguendo* that
19 the holding was correct, is that *Kaplan* dealt with rocket
20 attacks that took place between -- which all took place rather
21 in the summer of 2006. And the period that was relevant to
22 *Kaplan* was 2004 to 2006 and one of things that the district
23 court focused on in the decision referenced by Mr. Hanchet is
24 the fact that the Martyrs Foundation, the same Martyrs
25 Foundation that is discussed at length in the complaint here,

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1 that organization was not designated by the United States
2 Treasury until after the rocket attacks, and the other
3 customers who were designated by the United States Government,
4 who were identified in that action were also designated
5 subsequent to the 2006 conflagration. So there, one obvious
6 distinction is that the time period was much narrower. Here,
7 we're dealing with a time period from 2003 to 2011 and
8 certainly not all but many of the entities that we've
9 identified as bank customers here were designated in 2006,
10 2007 and beyond. So that's sort of a threshold factual
11 distinction. The Islamic Resistance Support Organization, the
12 Martyrs Foundation, certain individual Hezbollah operatives
13 were designated during the time period in question, not
14 afterwards.

15 Factually the case involving *Honickman*, the BLOM
16 Bank, is much more analogous to the case you mentioned a few
17 moments ago, that's *Boim* versus *Holy Land Foundation*. Briefly
18 the facts of *Boim* were that the plaintiffs were the family of
19 a teenager who was killed by Hamas in 1994, 1995 and they sued
20 the Holy Land Foundation and other Islamic charities in the
21 United States who they alleged had provided funding, donation,
22 material support under the statute's definition to various
23 charities, charitable front organizations belonging to Hamas.
24 At the time none of those front organizations had been
25 designated by the United States Government, but the

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1 allegations were that the donor, the defendants in that case,
2 knew that in fact those entities they were sending money to
3 were controlled by Hamas. And I won't go through the
4 entire --

5 THE COURT: How is that analogous -- let me just ask
6 you a question because I guess it's your view that *Boim*
7 applies here. I mean that was a direct supplying of money to
8 these organizations. The banks aren't doing that here, how
9 are they supplying money to these organizations. It's
10 different from directly donating money, that's not what is
11 alleged here, is it?

12 MR. OSEN: That's true, Your Honor. Section 2339A
13 which defines material support under the statute both speaks
14 of currencies and other things of value and it speaks of
15 financial services. Congress recognized that the provision of
16 financial services was a vital aspect of the support of
17 terrorism and that's true for perhaps not very obvious
18 reasons.

19 When terrorist organizations of the scope and reach
20 of Hezbollah or Hamas or al-Qaeda, for example, fund raise in
21 various forms, whether it's through donations or criminal
22 activity, they do so from all over the world. And in order to
23 be able to raise that money effectively and to be able to
24 transfer that money effectively they rely on the formal
25 banking system. And so Congress, when it passed 2339(a) and

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1 when it created the material support statute with the
2 definition of material support it included those specific
3 provisions both for currency and the terms is monetary
4 instruments which would cover donations and then it also
5 covers financial services as well as training and other forms
6 of material support.

7 THE COURT: So any time a bank deals with a company
8 that has some connection to Hezbollah it violates the statute.

9 MR. OSEN: Well, that depends on two things. First
10 of all, it depends on its state of mind. Does it knowingly do
11 so or does it do so with a disregard for whether it is dealing
12 with Hezbollah. That's the Black letter law from *Weiss v. Nat*
13 *West* in the Second Circuit from 2014.

14 The second part of it is, are we dealing with
15 Hezbollah or are we dealing with an organization that is in
16 some way connected to Hezbollah or to any other FTO. And this
17 separates out, by the way, and distinguishes *Boim* -- or I
18 should say *Boim III*, as it is called, the en banc decision in
19 that case from the *In Re: Terrorist Attacks* case also known as
20 the *Al Rajhi* decision in the Second Circuit.

21 In *Boim*, as in *Honickman*, as in *Linde*, the
22 allegations and the evidence in two of those cases that went
23 to trial, the evidence was that the recipient organizations
24 were controlled by or were alter egos of an FTO and if you do
25 that, that is, if you are bank and you knowingly provide

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1 services to an FTO, you're violating the provisions of
2 Section 2339B.

3 Conversely, in *Al Rajhi*, you had an instance where
4 the account holder, the customer in that case, was an
5 organization that certainly had been credibly alleged to have
6 donated money to al-Qaeda but it also was an organization that
7 donated money to Hamas and to other organizations. It was not
8 a creature of, controlled by, or an alter ego of al-Qaeda and
9 therefore the mere fact that it was a questionable
10 organization, while that raised lots of issues concerning its
11 risk tolerance, meaning the defendant bank's risk tolerance
12 and its judgment, one could not say that the mere maintenance
13 of the account in that case necessarily meant money was going
14 to al-Qaeda.

15 THE COURT: And?

16 MR. OSEN: Right. So in this case, bringing it
17 forward, Your Honor, the allegations here, notwithstanding
18 Mr. Hanchet's reference to a lack of specific allegations or,
19 quote/unquote, vague links, here the complaint sets forth
20 chapter and verse how these entities are part of Hezbollah,
21 how the Hezbollah's Islamic Jihad organization, which is the
22 military wing, if you will, of Hezbollah, founded by its arch
23 terrorist Imad Mughniyeh, that organization created something
24 called the Business Affairs Component, which is sort of its
25 Chamber of Commerce, for lack of a better analogy, and that

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1 Business Affairs Component is not something we invented, this
2 is something that the United States Government has found and
3 has prosecuted individuals for and has undertaken various
4 regulatory actions against.

5 The business affairs component was originally run by
6 Imad Mughniyeh. After his death in 2008 it was taken over by
7 two individuals mentioned in the complaint, Adham Tabaja and
8 Abdallah Safieddine. And those two individuals run this
9 enormous network that includes narcotics trafficking, weapons
10 trafficking, blood diamonds, in all manner of other commercial
11 and criminal activities.

12 This is not a secret, this is not something unknown
13 in Lebanon. This is known as a core revenue stream, not just
14 in Lebanon but of these defendant banks, and it goes beyond
15 that, Your Honor, because the complaint alleges that Hezbollah
16 is so enmeshed, not just into the political system --

17 THE COURT REPORTER: Excuse me, Counsel. Somebody's
18 phone needs to be put on mute because there's a lot of
19 background noise. Thank you.

20 THE COURT: Continue, counsel.

21 MR. OSEN: Sorry. It's not simply something that
22 has infiltrated the political system in Lebanon where
23 Hezbollah dominates that, but also the banking system where
24 its own operatives are actually emplaced at the bank to
25 liaison and you see that -- again, this is not something which

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1 is simply an allegation by the plaintiffs, you see it
2 referenced explicitly in the designations of defendant Jammal
3 Trust Bank. You see it in the fact that defendants MEAB,
4 Middle East Africa Bank, their chairman until 2015 is himself
5 a Specially Designated Global Terrorist because of his role in
6 Hezbollah. So we're talking about something which is unlike
7 almost any other scenario in any other case in any other
8 jurisdiction.

9 Here, you have an ongoing conspiracy played out,
10 unfortunately, every day in the newspapers with the collapse
11 of the Lebanese economy and its banking system. You see the
12 collaboration between the defendants and Hezbollah to launder
13 billions of dollars mostly in criminal proceeds, some of it in
14 donations more akin to *Boim* where there are donations to
15 Hezbollah so-called charities or front organizations, but the
16 scale of this is unlike anything. The closest analogue to it
17 is Arab Bank and that does not compare to it in scope.

18 THE COURT: But the fact that the banks may be
19 involved in money laundering for these organizations, that
20 doesn't establish the causation link. You need to show or
21 have allegations that show that there is a direct relationship
22 between the defendants' actions, in this case the banks, and
23 the plaintiffs' injury. For a primary liability you've got to
24 show the proximate causation and isn't it a few steps removed
25 from that. You may have allegations that suggest that the

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1 banks are involved in money laundering for these
2 organizations, but how does that show a direct causal or
3 establish, rather, that the necessary element of proximate
4 causation for plaintiffs' injuries.

5 MR. OSEN: Well, Your Honor, we agree with the
6 defendants that *Rothstein* governs on the question of proximate
7 cause --

8 THE COURT: Right.

9 MR. OSEN: -- and we accept that legal standard.
10 *But Rothstein* is completely the opposite of the facts pled
11 here. In *Rothstein* the plaintiffs asked that causation be
12 determined in their favor as a matter of law because they had
13 a theory that having alleged a criminal act, the presumption
14 of causation went the other way and the defendants had to
15 prove it wasn't the cause. Then the Court set forth the
16 *Lerner* standard that was repeated by Mr. Hanchet. We don't
17 dispute that proximate cause is required, but we submit both
18 in the case of *Boim* and in *Linde*, that the proffer as to
19 proximate cause is, one, whether the assistance provided, in
20 this case the life blood of Hezbollah's financing network, was
21 a substantial factor in Hezbollah's ability to project its
22 efforts, its power, if you will, into Iraq is certainly pled
23 and certainly something that we believe we can prove and a
24 jury would obviously, from our standpoint, be willing to
25 accept and, moreover, the second prong of it is of course

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1 foreseeability.

2 There is no question in our mind that when you
3 engage in the kind of conduct on the scale and scope of what
4 the defendants have done here, it is imminently foreseeable,
5 if not inevitable, that Hezbollah is going to kill and maim
6 people as a result of that conduct. So we don't --

7 THE COURT: But are you arguing that with respect to
8 your primary liability or your aiding and abetting liability
9 that issue of foreseeability.

10 MR. OSEN: Both. Although, Your Honor, obviously
11 the test is somewhat different. *Linde* makes clear that the
12 substantial factor test in *Rothstein*, although similar in
13 certain respects, is not the exact standard that you apply to
14 JASTA liability. And I'm happy to go through the JASTA
15 factors as well, but --

16 THE COURT: In your view is your -- and I've asked
17 you this I guess before, but you say that you think your
18 primary liability argument and your aiding and abetting
19 liability are equally strong.

20 MR. OSEN: Yes.

21 THE COURT: Okay. Let me just see if there's
22 anything...did you want to add anything else to your argument?

23 MR. OSEN: Certainly, Your Honor.

24 First of all, let me say that Mr. Hanchet talked
25 about the substantial assistance factors in *Halberstam* --

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1 THE COURT: Yes.

2 MR. OSEN: -- and he spoke about the need to prove
3 encouragement, and I would just point Your Honor to the fact
4 that *Halberstam* offers two alternatives: Encouragement or
5 assistance. And it says specifically the quote from
6 *Halberstam* at 481 is, substantial assistance or encouragement,
7 end quote. And the Court, quote, looked at the -- first at
8 the nature of the act assisted, in that case a long-running
9 burglary enterprise, end quote, 488. Your Honor, the
10 fundamental fact is that *Halberstam* sets forth a standard that
11 defendants in this case and in many others simply don't like
12 and it's understandable because it is secondary liability not
13 primary liability.

14 In *Halberstam* the defendant was the girlfriend of a
15 burglar. The murder involved in *Halberstam* for which she was
16 found legally liable, civilly liable was one that was
17 unplanned. It is inconceivable from our point of view that an
18 unplanned murder resulting from a burglary that the defendant
19 in that case did not even know took place, somehow establishes
20 a higher standard both of foreseeability and awareness than
21 someone who knowingly provides financial services in the form
22 of hundreds of millions of dollars to a terrorist
23 organization --

24 THE COURT: How does it provide -- when you talk
25 about providing financial services, exactly did they provide

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1 money to these organizations, or just banking services?

2 MR. OSEN: They provided banking services which
3 allowed --

4 THE COURT: But not money, correct?

5 MR. OSEN: Yes, it's not actual currency. It's a
6 service which is critically important to their operations.
7 Because, for example, when the government of the United States
8 found that Hezbollah was engaged in this narcotic trafficking
9 endeavor run by a person designated as a specially designated
10 narcotics trafficking kingpin by the name of Ayman Joumaa,
11 Mr. Joumaa and his network contracted with Colombian and
12 Mexican cartels to move product for them through Africa into
13 Europe and to take the enormous proceeds in cash that they
14 received from these sales and launder them through the
15 Lebanese banking system. In order to make that deal, in order
16 to gain the profits from this enterprise they needed somebody
17 to actually allow them a venue to deposit these sums into the
18 banking system so they could be laundered principally through
19 trade-based money laundering and so --

20 THE COURT: But there's a difference between
21 assisting on the crime of money laundering and assisting in
22 terrorist attacks. I mean, you have to show a proximate
23 causation to the terrorist attacks, so assisting in money
24 laundering is not the same as assisting in terrorist attacks.

25 MR. OSEN: We agree with that, but we would also

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1 point out that the question of whether it assists a terrorist
2 attack is not a question solely of whether the money actually
3 was used to purchase the explosives. What *Boim* says and what
4 *Linde* says is that financial services or -- particularly
5 *Linde*, which is dealing with a more analogous scenario, says
6 that financial services given to an FTO knowingly is something
7 which may satisfy proximate cause, it may satisfy appears to
8 be intended but in that case because there was no jury
9 instructions relating to Section 2331(1's) definition it had
10 to be remanded. It did not say by any means that the
11 provision of financial services could not be the proximate
12 cause and the same thing was true in the *Weiss* case and the
13 *Strauss* case. Those cases, which ultimately are now on appeal
14 on the questions of scienter and the apparent intent question,
15 the Court in those cases found that the financial services to
16 the FTO were plausibly established at least for a jury to
17 consider whether they proximately caused the plaintiffs'
18 injury.

19 So there is a whole line of cases in which financial
20 services have been found sufficient even to the point of
21 summary judgment to plausibly allege and, ultimately, in those
22 cases prove sufficient for summary judgment that financial
23 services can proximately cause injuries where you are
24 facilitating the ongoing operations of a terrorist
25 organization and their financing.

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1 THE COURT: Well, under *Linde* they said that the
2 secondary actor must be aware that by assisting the principal
3 it assumed a role in terrorist activities. That you have to
4 show, correct?

5 MR. OSEN: Yes. And with respect to the JASTA
6 secondary liability, a lot has been made of one phrase in
7 *Linde* that aiding and abetting an act of international
8 terrorism requires more than the provision of material support
9 to a designated terrorist organization, but for that
10 proposition, Your Honor, the *Linde* Court cited back to
11 *Halberstam* and that's certainly true because in *Halberstam* it
12 wouldn't have been sufficient for Ms. Hamilton to have given
13 any kind of support or assistance to Mr. Welch. It had to be
14 assistance with an awareness that she was aiding his criminal
15 enterprise. So that criminal enterprise -- and this is
16 perhaps the most key point with respect to secondary
17 liability, the criminal enterprise there was a burglary
18 enterprise --

19 THE COURT: But in that case the wife was assisting
20 her husband and her husband was the one who committed the
21 murder. Here, the banks are assisting its customers, but it's
22 not the customers who are directly engaging in the terrorist
23 activities in the way that her husband was committing the
24 murder. Isn't that a distinction?

25 MR. OSEN: Not really, respectfully, Your Honor.

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1 *Halberstam* obviously deals with an individual, so we're
2 talking about two people who know each other. There is an
3 obvious factual distinction when you're talking about a
4 corporation or in this case a terrorist organization. But
5 Congress clearly contemplated, and this is evident from both
6 the findings and purpose of the statute, that it is
7 organizations, foreign organizations that commit these acts of
8 terrorism and so the question isn't whether the defendant in
9 this case, any one of them knows or deals directly with the
10 terrorist operative or cells that sets an attack Iraq, the
11 question is whether they're dealing with Hezbollah. Hezbollah
12 is in the role of Mr. Welch and that's something that Congress
13 made explicit in the findings and purpose of the statute.

14 THE COURT: You list in the complaint over 200
15 terrorist acts, correct?

16 MR. OSEN: I don't recall the exact number, but...

17 THE COURT: Well, it's a large number, correct?

18 MR. OSEN: Agreed.

19 THE COURT: Are the allegations sufficient to prove
20 that Hezbollah was involved in each and every one of those
21 terrorist attacks.

22 MR. OSEN: Yes, that is our view, Your Honor. And,
23 specifically, we point to the fact that it's not simply a
24 question of whether or not the defendants -- I'm sorry,
25 whether Hezbollah trained specific organizations, it's a

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1 function of the fact that these organizations -- or I should
2 say these special groups, as we've termed them, were in fact
3 created by Hezbollah, they were set up by Hezbollah and by the
4 individual I previously mentioned Mr. Mughniyeh. That's in
5 paragraphs 1861, 1865 to 1866, 1871 to 72.

6 The role of Hezbollah in these attacks was to
7 establish their proxy cells in Iraq with Iranian support to
8 provide them with training, to provide them with money, to
9 provide them with specific signature weapons, the explosively
10 formed penetrator and, in addition to all of that, in this
11 case Hezbollah is alleged to have worked on a day-to-day basis
12 on the ground in Iraq helping its proxies circumvent and
13 overcome U.S. countermeasures against the very weapons that
14 they were deploying. So on a week-by-week basis and over a
15 course of many years, Hezbollah actually directed these
16 attacks in Iraq and was part of the command structure that
17 initiated the attacks, decided when those attacks would
18 lessen, when violence would intensify, excuse me, to serve the
19 purposes of Hezbollah and its Iranian masters is by any
20 definition the organization most primarily responsible for the
21 attacks.

22 THE COURT: Before we turn to something, another
23 issue, I know that we haven't heard yet from Mr. DeLaquil,
24 but, Mr. Osen, let me ask you to turn to JTB's liability. Do
25 you believe the case is stronger against that organization

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1 than the other defendants in this case?

2 MR. OSEN: Certainly I think the defendants view
3 that because they've chosen to separate themselves from Jammal
4 Trust Bank and have them file separately. I think it would be
5 disingenuous to say that it's not an advantage from the
6 plaintiffs' standpoint to have one of the defendants
7 designated as a terrorist by the United States after the
8 complaint has been filed. The allegations there, particularly
9 with the U.S. Government designation, are pretty stark.
10 Obviously --

11 THE COURT: Are they different in kind from the
12 allegations against the other defendants --

13 MR. OSEN: No.

14 THE COURT: -- apart from their designation as a
15 terrorist organization?

16 MR. OSEN: They are different only in the sense that
17 it has imprimatur of the United States Government singling
18 them out and specifically their knowledge and specifying,
19 quote/unquote, their deep coordination with Hezbollah that
20 dates back to the mid 2000s, end quote. So in that sense it
21 is a great fact for us to have, but the allegations are equal
22 against all of the defendants. And in fact, I would argue
23 that although Jammal Trust Bank is the only SDGT of the 12
24 defendants, it's actually by virtue of its smaller size a less
25 significant, in terms of overall force of its conduct, less

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1 significant than many of the other defendants who --

2 THE COURT: Okay.

3 MR. OSEN: -- committed the same conduct but on a
4 greater scale.

5 THE COURT: All right. Thank you, Mr. Osen.

6 Mr. Hanchet, is there anything that you wanted to
7 reply directly to without repeating your entire argument that
8 I heard a few moments ago.

9 MR. HANCHET: Yes, Your Honor, let me just address
10 one or two points.

11 THE COURT: Okay.

12 MR. HANCHET: The first is, what's going on is
13 Mr. Osen is presenting a complaint that is essentially
14 accusing the entire Lebanese banking system of being complicit
15 in these attacks. If you follow that to its logical
16 conclusion, he's essentially accusing the entire Lebanese
17 economy of participating in various ways with Hezbollah and
18 that can't be how the ATA works. And I commend to Your
19 Honor's attention the amicus brief that was filed by the
20 European Banking Federation and the IIB that speaks, I think
21 persuasively, that if plaintiffs are permitted to proceed
22 using charges of terrorism in this way it will have disastrous
23 consequences for Lebanon and indeed the international
24 financial system.

25 THE COURT: So why does that really make a

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1 difference if in fact the allegations are supportable and
2 correct. I mean that's sort of like, so what, they shouldn't
3 have done it.

4 MR. HANCHET: Well, actually with respect -- with
5 respect, Your Honor, it's much more than that. They're
6 accusing banks of being in cahoots with Hezbollah but if you
7 read their complaint they're saying the car washers are in
8 cahoots with Hezbollah, the coffee shops are in cahoots with
9 Hezbollah. What they're basically saying is the entire
10 economy, you know, a country with millions of people, they're
11 all in cahoots with Hezbollah and they're all responsible for
12 these attacks that occurred. That is not how the chain of
13 causation can work and that's certainly not how the ATA should
14 work.

15 THE COURT: Okay.

16 MR. HANCHET: That's all, Your Honor. You covered
17 your other points in your questions.

18 THE COURT: Anything else.

19 MR. HANCHET: No, thank you very much.

20 THE COURT: All right. Mr. DeLaquil, did you want
21 to say anything because I haven't heard from you yet.

22 What do you believe the significance of your client
23 being designated as -- whatever the acronym is.

24 MR. DeLAQUIL: Your Honor, the designation of JTB as
25 an SGDT -- SDGT, a Specially Designated Global Terrorist is

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1 certainly significant for JTB. JTB is now under the
2 receivership of the Central Bank of Lebanon which has
3 appointed Dr. Muhammad Baasiri, a well-respected Lebanese bank
4 official as liquidator of the bank and the Central Bank is
5 cooperating with OFAC both in responding to specific OFAC
6 information requests and reaching out affirmatively to share
7 information, but I think the designation of JTB as an SDGT
8 doesn't have any real effect on the arguments in this case.

9 JTB was designated in September 2019, long after the
10 events that plaintiffs allege give rise to liability and the
11 only aspect of the designation that we believe is properly
12 before the Court on a motion to dismiss is the designation
13 itself as published in the Federal Register at 84 Federal
14 Register 46782. The only thing that designation states is
15 that JTB was designated, quote, for assisting in, sponsoring
16 or providing financial material or technological support, or
17 financial or other services to or in support of Hezbollah, an
18 entity whose property and interests in property are blocked
19 specific pursuant to E.O.13224, end quote. The designation
20 has no information specifically as to what conduct it was that
21 the Treasury Department relied on in the designation or when
22 that conduct occurred, and for primary liability under the ATA
23 you have to have an act dangerous to human life. The mere
24 fact of the designation is simply not enough to make plausible
25 the allegation that there is an act dangerous to human life.

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1 For secondary liability under the ATA you have to
2 have, as the Court noted, assumed a role in the enterprise.
3 And the fact of the designation, as described in the Federal
4 Register, does not provide enough content to make plausible a
5 claim that JTB's conduct was akin to the live-in girlfriend in
6 *Halberstam* who had three children with the robber, who kept
7 the books for the robber where she recorded only the products
8 they sold, not the goods they may have robbed, and let her
9 husband install a smelting furnace to melt down his stolen
10 gold in the family garage. There's simply not enough there.

11 The plaintiff has also, in its motion to dismiss,
12 referred to various statements in a press release I believe
13 also included that in the material submitted to the Court. We
14 do not believe that that press release is properly considered
15 by the Court on a motion to dismiss. It is not a document the
16 plaintiffs relied on in preparing the amended complaint, nor
17 is it integral to that complaint. And so as a result, we
18 object to its consideration. We'll address it if you would
19 like me to, but we don't believe that it is properly before
20 the Court.

21 (Continued on the next page.)
22
23
24
25

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1 THE COURT: All right, anything else?

2 MR. DeLAQUIL: Not at this time, Your Honor.

3 THE COURT: Okay.

4 Mr. Osen, did you just want to respond to any of
5 that since I kind of flipped it here in terms of the argument?

6 MR. OSEN: Yes.

7 First of all, obviously the press release and the
8 designation itself took place about three weeks after the
9 amended complaint was filed. So it's not a dereliction in
10 failing to include it, it simply occurred after the submission
11 of the amended complaint, and as such the Court can properly
12 consider it.

13 THE COURT: Well, how can I properly consider it if
14 it's outside the four corners of the complaint?

15 MR. OSEN: Well, the Court can do so because it,
16 number one, it can take judicial notice of a public record.

17 Number two --

18 THE COURT: A press release is a public record?

19 MR. OSEN: It certainly is. In fact, press releases
20 by the U.S. Treasury Department have in multiple instances
21 have been found to be admissible evidence in --

22 THE COURT: Okay.

23 MR. OSEN: In the --

24 THE COURT: Well, admissible evidence.

25 MR. OSEN: Right.

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1 THE COURT: All right.

2 MR. OSEN: That's both admissible because it's a
3 report by a law enforcement agency under a duty of law.

4 But also it's part of the public record, it's
5 something which has been taken note of by courts in a variety
6 of ATA context, both civil and criminal.

7 To the extent that as a procedural matter the Court
8 wants us to amend, to attach it as an exhibit to the
9 complaint, you know, for the tidiness of the record, that's
10 something that we'd be prepared to do.

11 But I think the fundamental facts of the designation
12 make clear that Jammal Trust Bank knowingly facilitated the
13 banking activities of Hezbollah. It even says that it
14 coordinated with a member of Parliament by the name of Amin
15 Cherri, a close associate of Adham Tabaja mentioned repeatedly
16 in the complaint. It talked about how Jammal Trust helped the
17 Martyr Foundation and its corporate subsidiaries, conceal
18 their activities in the bank.

19 And lastly, as I quoted earlier, Treasury described,
20 quote, deep coordination between Hezbollah and Jammal Trust
21 which dates back to at least the mid-2000s and which spans
22 many of the bank's branches in Lebanon, end quote.

23 I'll just conclude by saying if the ATA, whether
24 primary liability or JASTA liability, does not give rise for
25 12(b) purposes to a plausible allegation in a case where the

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1 Treasury has designated the defendant for this kind of
2 conduct, then I cannot imagine a circumstance where anyone
3 could be found liable under the ATA's --

4 THE COURT: All right. Thank you.

5 MR. DeLAQUIL: Your Honor, Mark DeLaquil. If I may,
6 could I respond to that briefly?

7 THE COURT: Yes.

8 MR. DeLAQUIL: Very briefly. I think at best the
9 fact of this designation of JTB brings this case closer to
10 *Kaplan* where, as the plaintiffs themselves allege in
11 paragraph 5684 of their complaint, the government has
12 designated the defendant bank as a primary money laundering
13 concern under Section 311 of the USA Patriot Act for
14 laundering money for Hezbollah.

15 And in *Kaplan*, the Court still applied the principle
16 of proximate causation that applies to every tort action, or a
17 slip and fall in a grocery store, and found that the
18 plaintiffs did not plausibly allege.

19 So I don't think that there is a, as Mr. Osen would
20 suggest, that the Court would be blowing a hole in the ATA but
21 for it to find that there's no claim stated against JTB,
22 notwithstanding designation.

23 THE COURT: All right. Thank you.

24 Mr. Sullivan, you represent SGBL?

25 MR. SULLIVAN: I do, Your Honor.

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1 THE COURT: Okay. And I think you wanted to be
2 heard on the issue of successor liability.

3 MR. SULLIVAN: Right, Your Honor. Thank you very
4 much. I'll be brief, Your Honor.

5 Our argument, Your Honor, is that the successor
6 liability count, which is Count Four, should be dismissed for
7 at least three reasons, Your Honor.

8 First, personal jurisdiction is lacking.

9 The second reason, Your Honor, is the count fails to
10 state a claim because there is no express authorization to sue
11 a foreign asset, and liability purchaser in the U.S. courts
12 under the ATA.

13 And the third reason, Your Honor, would be if the
14 Court concludes that the Lebanese banks are not liable under
15 the ATA, then SGBL would have no liability under Count Four
16 either, since its liability under Count Four is based on its
17 successor status.

18 THE COURT: All right. So there is no independent
19 claim but for its successor status, that it somehow violated
20 the statute is your position.

21 MR. SULLIVAN: Well, within Count Four, Your Honor,
22 Mr. Hanchet has addressed Counts One, Two and Three on behalf
23 of the -- on the interest of the other banks.

24 But within Count Four, Your Honor, the only claim in
25 Count Four is SGBL is liable as a result of its successor

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1 status.

2 THE COURT: All right. What about its own contexts?
3 Can it -- jurisdiction be based on its own context apart from
4 the context of the bank whose liability it took over?

5 MR. SULLIVAN: No, Your Honor, not within -- not
6 with regards to Count Four. Obviously the jurisdiction has to
7 attach to the claim itself.

8 THE COURT: Right.

9 MR. SULLIVAN: And you cannot -- they're not
10 alleging general jurisdiction against SGBL. They're alleging
11 specific jurisdiction and that would have to relate to the
12 conduct, which under Count Four, which is the sales and
13 purchase agreement that was executed in Lebanon between two
14 Lebanese banks.

15 THE COURT: Didn't it agree to take over its
16 liabilities?

17 MR. SULLIVAN: Well, there's language certainly,
18 Your Honor, within the complaint that references a paragraph
19 in the SPA. That talks about the assumptions of liabilities.

20 THE COURT: Right.

21 MR. SULLIVAN: But having said that, Your Honor,
22 assumption of liability under both New York and federal law is
23 not analogous to an assumption of jurisdiction.

24 And New York law has made it clear that liability
25 relating to tort liability does not confer jurisdiction in and

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1 of itself. It requires more than just that liability.

2 And the federal cases that the plaintiffs cite, not
3 one of the cases confers jurisdiction solely based on the
4 purchase of assets and liabilities.

5 And further, Your Honor, the plaintiffs in its
6 complaints -- in its complaint acknowledges that SGBL engaged
7 an international compliance and a forensic expert to review
8 the accounts, but that SGBL did not take all of the accounts
9 of LCB.

10 So liability alone, assumption of liability alone,
11 Your Honor, under New York law is not sufficient to give
12 jurisdiction.

13 THE COURT: All right. Thank you.

14 Mr. Osen, do you want to respond to that with regard
15 to Count Four?

16 MR. OSEN: Sure.

17 So first of all, Your Honor, with respect to your
18 question, we submit that SGBL is independently subject to
19 personal -- specific personal jurisdiction for the same reason
20 as the other defendants.

21 I won't go through the whole *Licci* analysis, I will
22 only point out that the complaint has detailed allegations
23 against each defendant and its purposeful availment of New
24 York correspondent banking.

25 I'll also just briefly note, from a liability

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1 standpoint, paragraph 1467 through 69 describe the 2005
2 Israeli Intelligence assessment of SGBL as quote, connected
3 directly to the financial infrastructure of Hezbollah, end
4 quote.

5 I'll also lastly point out on the factual record
6 that, as Mr. Sullivan pointed out, SGBL did not take over all
7 of the accounts relating to Hezbollah that were at LCB,
8 however, the complaint specifies that it did retain the
9 account of Nazim Ahmad an SDGT; Ayman Joumaa, a narcotics
10 trafficking kingpin, that's paragraph 1470; Elissa Holding,
11 also a narcotics trafficking kingpin designation; and the
12 Yousser Company, the investment arm of Hezbollah an SDGT since
13 2007, but also retained by defendant SGBL.

14 Your Honor's quite right with respect to the
15 successor liability question that they expressly assume their
16 predecessor's tort liability. And under both New York and
17 common law, we cited a Second Circuit case, *New York versus*
18 *National Service Industries, Inc.*, the assumption expressed
19 and explicit of a tort liability in this case, any and all
20 tort liability, is something that takes this out of all these
21 cases that the defendants have relied upon; both as well asset
22 sales, mergers, de facto mergers.

23 Here we have a situation where SGBL knowingly
24 entered into an agreement to acquire all liabilities from LCB.

25 And moreover -- this is my last point, Your Honor --

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1 unlike the typical case where one company buys another company
2 and there's a later products liability issue or there's a
3 contractual dispute, in this case LCB's assets and the
4 assumption of any and all of LCB's liabilities didn't take
5 place under ordinary circumstances of the kind I just
6 described, but rather that assumption took place in the
7 context of the U.S government identifying LCB as a financial
8 institution of primary money --

9 THE COURT: Identifying who? I'm sorry, the United
10 States Government identified which entity?

11 MR. OSEN: LCB.

12 THE COURT: Oh, okay.

13 MR. OSEN: Identified, under the Patriot Act, which
14 has consequences. Therefore, the sale, which took place
15 literally weeks later, was effectively a distress sale that
16 was orchestrated by -- as a result of that U.S. finding, if
17 you will, under the Patriot Act.

18 The parties involved were sophisticated parties
19 represented by counsel, acutely aware of LCB's potential
20 liabilities, and the bottom line is they negotiated a sale and
21 purchase agreement that contained the any-and-all language
22 that we reference.

23 That's it, Your Honor.

24 THE COURT: All right. Thank you, gentlemen, for
25 your arguments. I will reserve decision on the case.

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1 MR. SULLIVAN: Your Honor, may I briefly response.
2 This is Michael Sullivan.

3 THE COURT: Yes. Go ahead.

4 MR. SULLIVAN: Sorry, Your Honor. Plaintiff has
5 misstated the law as relates to jurisdiction for purposes of
6 successor liability.

7 The line of cases, New York cases, clearly state
8 that successor liability is not liability, tort liability does
9 not confer jurisdiction. And the federal cases that the
10 plaintiff cite in its brief, Your Honor, requires something
11 much more than simply successor status.

12 They talk about contract terms that include foreign
13 selection clauses, as well as merger-type situations; neither
14 of which is present here.

15 And finally, Your Honor, this was a cash
16 transaction, an all cash transaction, so there's no merger,
17 there's no allegations that there's any merger. In fact, LCB
18 continues to survive today and responds to litigation within
19 the United States.

20 It was a \$580 million cash transaction that was
21 publicly communicated, I think as the parties have indicated
22 in some of its briefings, including U.S. government's
23 participation in the transaction.

24 THE COURT: All right. Thank you. I'll look at
25 those cases again that you made reference to.

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1 All right, thank you, gentlemen. And as I stated
2 earlier, I'll reserve decision on the case.

3 MR. OSEN: Thank you, Your Honor.

4 MR. SULLIVAN: Thank you, Your Honor.

5 MR. HANCHET: Thank you, Your Honor.

6 (Whereupon, the matter was concluded.)

7 * * * * *

8
9 We certify that the foregoing is a correct transcript from the
10 record of proceedings in the above-entitled matter.

11 s/ Georgette K. Betts

September 2, 2020

12 s/ Linda D. Danelczyk

13 GEORGETTE K. BETTS

DATE

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